

SHB 1266 - S COMM AMD  
By Committee on Transportation

ADOPTED 04/14/2005

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** It is the intent of the legislature to  
4 promote the safety of drivers and passengers on Washington roads and  
5 public transportation systems. To this end, Washington has established  
6 a reporting requirement for employers of commercial drivers who test  
7 positive for unlawful substances. The legislature recognizes that  
8 transit operators and their employers are an asset to the public  
9 transportation system and continuously strive to provide a safe and  
10 efficient mode of travel. In light of this, the legislature further  
11 intends that the inclusion of transit employers in the reporting  
12 requirements serve only to enhance the current efforts of these  
13 dedicated employers and employees as they continue to provide a safe  
14 public transportation system to the citizens of Washington.

15 **Sec. 2.** RCW 46.25.010 and 2004 c 187 s 2 are each amended to read  
16 as follows:

17 The definitions set forth in this section apply throughout this  
18 chapter.

19 (1) "Alcohol" means any substance containing any form of alcohol,  
20 including but not limited to ethanol, methanol, propanol, and  
21 isopropanol.

22 (2) "Alcohol concentration" means:

23 (a) The number of grams of alcohol per one hundred milliliters of  
24 blood; or

25 (b) The number of grams of alcohol per two hundred ten liters of  
26 breath.

27 (3) "Commercial driver's license" (CDL) means a license issued in  
28 accordance with the requirements of this chapter to an individual that  
29 authorizes the individual to drive a class of commercial motor vehicle.

1 (4) The "commercial driver's license information system" (CDLIS) is  
2 the information system established pursuant to the CMVSA to serve as a  
3 clearinghouse for locating information related to the licensing and  
4 identification of commercial motor vehicle drivers.

5 (5) "Commercial driver's instruction permit" means a permit issued  
6 under RCW 46.25.060(5).

7 (6) "Commercial motor vehicle" means a motor vehicle designed or  
8 used to transport passengers or property:

9 (a) If the vehicle has a gross vehicle weight rating of 26,001 or  
10 more pounds;

11 (b) If the vehicle is designed to transport sixteen or more  
12 passengers, including the driver;

13 (c) If the vehicle is transporting hazardous materials as defined  
14 in this section; or

15 (d) If the vehicle is a school bus regardless of weight or size.

16 (7) "Conviction" has the definition set forth in RCW 46.20.270.

17 (8) "Disqualification" means a prohibition against driving a  
18 commercial motor vehicle.

19 (9) "Drive" means to drive, operate, or be in physical control of  
20 a motor vehicle in any place open to the general public for purposes of  
21 vehicular traffic. For purposes of RCW 46.25.100, 46.25.110, and  
22 46.25.120, "drive" includes operation or physical control of a motor  
23 vehicle anywhere in the state.

24 (10) "Drugs" are those substances as defined by RCW 69.04.009,  
25 including, but not limited to, those substances defined by 49 C.F.R.  
26 40.3.

27 (11) "Employer" means any person, including the United States, a  
28 state, or a political subdivision of a state, who owns or leases a  
29 commercial motor vehicle, or assigns a person to drive a commercial  
30 motor vehicle.

31 (12) "Gross vehicle weight rating" (GVWR) means the value specified  
32 by the manufacturer as the maximum loaded weight of a single or a  
33 combination or articulated vehicle, or the registered gross weight,  
34 where this value cannot be determined. The GVWR of a combination or  
35 articulated vehicle, commonly referred to as the "gross combined weight  
36 rating" or GCWR, is the GVWR of the power unit plus the GVWR of the  
37 towed unit or units.

1 (13) "Hazardous materials" means any material that has been  
2 designated as hazardous under 49 U.S.C. Sec. 5103 and is required to be  
3 placarded under subpart F of 49 C.F.R. part 172 or any quantity of a  
4 material listed as a select agent or toxin in 42 C.F.R. part 73.

5 (14) "Motor vehicle" means a vehicle, machine, tractor, trailer, or  
6 semitrailer propelled or drawn by mechanical power used on highways, or  
7 any other vehicle required to be registered under the laws of this  
8 state, but does not include a vehicle, machine, tractor, trailer, or  
9 semitrailer operated exclusively on a rail.

10 (15) "Out-of-service order" means a temporary prohibition against  
11 driving a commercial motor vehicle.

12 (16) "Positive alcohol confirmation test" means an alcohol  
13 confirmation test that:

14 (a) Has been conducted by a breath alcohol technician under 49  
15 C.F.R. 40; and

16 (b) Indicates an alcohol concentration of 0.04 or more.

17 A report that a person has refused an alcohol test, under  
18 circumstances that constitute the refusal of an alcohol test under 49  
19 C.F.R. 40, will be considered equivalent to a report of a positive  
20 alcohol confirmation test for the purposes of this chapter.

21 (17) "School bus" means a commercial motor vehicle used to  
22 transport preprimary, primary, or secondary school students from home  
23 to school, from school to home, or to and from school-sponsored events.  
24 School bus does not include a bus used as a common carrier.

25 ((+17)) (18) "Serious traffic violation" means:

26 (a) Excessive speeding, defined as fifteen miles per hour or more  
27 in excess of the posted limit;

28 (b) Reckless driving, as defined under state or local law;

29 (c) A violation of a state or local law relating to motor vehicle  
30 traffic control, other than a parking violation, arising in connection  
31 with an accident or collision resulting in death to any person;

32 (d) Driving a commercial motor vehicle without obtaining a  
33 commercial driver's license;

34 (e) Driving a commercial motor vehicle without a commercial  
35 driver's license in the driver's possession; however, any individual  
36 who provides proof to the court by the date the individual must appear  
37 in court or pay any fine for such a violation, that the individual held

1 a valid CDL on the date the citation was issued, is not guilty of a  
2 "serious traffic offense";

3 (f) Driving a commercial motor vehicle without the proper class of  
4 commercial driver's license endorsement or endorsements for the  
5 specific vehicle group being operated or for the passenger or type of  
6 cargo being transported; and

7 (g) Any other violation of a state or local law relating to motor  
8 vehicle traffic control, other than a parking violation, that the  
9 department determines by rule to be serious.

10 ~~((+18+))~~ (19) "State" means a state of the United States and the  
11 District of Columbia.

12 ~~((+19+))~~ (20) "Substance abuse professional" means an alcohol and  
13 drug specialist meeting the credentials, knowledge, training, and  
14 continuing education requirements of 49 C.F.R. 40.281.

15 (21) "Tank vehicle" means a vehicle that is designed to transport  
16 a liquid or gaseous material within a tank that is either permanently  
17 or temporarily attached to the vehicle or the chassis. Tank vehicles  
18 include, but are not limited to cargo tanks and portable tanks.  
19 However, this definition does not include portable tanks having a rated  
20 capacity under one thousand gallons.

21 ~~((+20+))~~ (22) "United States" means the fifty states and the  
22 District of Columbia.

23 (23) "Verified positive drug test" means a drug test result or  
24 validity testing result from a laboratory certified under the authority  
25 of the federal department of health and human services that:

26 (a) Indicates a drug concentration at or above the cutoff  
27 concentration established under 49 C.F.R. 40.87; and

28 (b) Has undergone review and final determination by a medical  
29 review officer.

30 A report that a person has refused a drug test, under circumstances  
31 that constitute the refusal of a federal department of transportation  
32 drug test under 49 C.F.R. 40, will be considered equivalent to a report  
33 of a verified positive drug test for the purposes of this chapter.

34 **Sec. 3.** RCW 46.25.123 and 2002 c 272 s 1 are each amended to read  
35 as follows:

36 (1) All medical review officers or breath alcohol technicians hired  
37 by or under contract to a motor carrier or employer who employs drivers

1 who operate commercial motor vehicles and who is required to have a  
2 testing program conducted under the procedures established by 49 C.F.R.  
3 ((382)) 40 or to a consortium the carrier or employer belongs to, as  
4 defined in 49 C.F.R. ((382.17)) 40.3, shall report the finding of a  
5 commercial motor vehicle driver's ((confirmed)) verified positive drug  
6 test or positive alcohol confirmation test to the department of  
7 licensing on a form provided by the department. If the employer is  
8 required to have a testing program under 49 C.F.R. 655, a report of a  
9 verified positive drug test or positive alcohol confirmation test must  
10 not be forwarded to the department under this subsection unless the  
11 test is a pre-employment drug test conducted under 49 C.F.R. 655.41 or  
12 a pre-employment alcohol test conducted under 49 C.F.R. 655.42.

13 (2)(a) A motor carrier or employer who employs drivers who operate  
14 commercial motor vehicles and who is required to have a testing program  
15 conducted under the procedures established by 49 C.F.R. 40, or the  
16 consortium the carrier or employer belongs to, must report a refusal by  
17 a commercial motor vehicle driver to take a drug or alcohol test, under  
18 circumstances that constitute the refusal of a test under 49 C.F.R. 40  
19 and where such refusal has not been reported by a medical review  
20 officer or breath alcohol technician, to the department of licensing on  
21 a form provided by the department.

22 (b) An employer who is required to have a testing program under 49  
23 C.F.R. 655 must report a commercial motor vehicle driver's verified  
24 positive drug test or a positive alcohol confirmation test when: (i)  
25 The driver's employment has been terminated or the driver has resigned;  
26 (ii) any grievance process, up to but not including arbitration, has  
27 been concluded; and (iii) at the time of termination or resignation the  
28 driver has not been cleared to return to safety-sensitive functions.

29 (3) Motor carriers, employers, or consortiums shall make it a  
30 written condition of their contract or agreement with a medical review  
31 officer or breath alcohol technician, regardless of the state where the  
32 medical review officer or breath alcohol technician is located, that  
33 the medical review officer or breath alcohol technician is required to  
34 report all Washington state licensed drivers who have a ((confirmed))  
35 verified positive drug test or positive alcohol confirmation test to  
36 the department of licensing within three business days of the  
37 ((confirmed-test)) verification or confirmation. Failure to obtain  
38 this contractual condition or agreement with the medical review officer

1 or breath alcohol technician by the motor carrier, employer, or  
2 consortium, or failure to report a refusal as required by subsection  
3 (2) of this section, will result in an administrative fine as provided  
4 in RCW 46.32.100 or 81.04.405.

5 (4) Substances obtained for testing may not be used for any purpose  
6 other than drug or alcohol testing under 49 C.F.R. ((382)) 40.

7 **Sec. 4.** RCW 46.25.125 and 2002 c 272 s 2 are each amended to read  
8 as follows:

9 (1) When the department of licensing receives a report from a  
10 medical review officer ((~~or~~)), breath alcohol technician, employer,  
11 contractor, or consortium that ((~~the holder of a commercial driver's~~  
12 ~~license~~)) a driver has a ((~~confirmed~~)) verified positive drug test or  
13 positive alcohol confirmation test, ((~~either~~)) as part of the testing  
14 program ((~~required by~~)) conducted under 49 C.F.R. ((~~382 or as part of~~  
15 ~~a preemployment drug test~~)) 40, the department shall disqualify the  
16 driver from driving a commercial motor vehicle under RCW 46.25.090(7)  
17 subject to a hearing as provided in this section. The department shall  
18 notify the person in writing of the disqualification by first class  
19 mail. The notice must explain the procedure for the person to request  
20 a hearing.

21 (2) A person disqualified from driving a commercial motor vehicle  
22 for having a ((~~confirmed~~)) verified positive drug test or positive  
23 alcohol confirmation test may request a hearing to challenge the  
24 disqualification within twenty days from the date notice is given. If  
25 the request for a hearing is mailed, it must be postmarked within  
26 twenty days after the department has given notice of the  
27 disqualification.

28 (3) The hearing must be conducted in the county of the person's  
29 residence, except that the department may conduct all or part of the  
30 hearing by telephone or other electronic means.

31 (4) For the purposes of this section, or for the purpose of a  
32 hearing de novo in an appeal to superior court, the hearing must be  
33 limited to the following issues: (a) Whether the driver is the person  
34 who ((~~took the drug or alcohol test~~)) is the subject of the report; (b)  
35 whether the motor carrier, employer, or consortium has a program that  
36 ((~~meets~~)) is subject to the federal requirements under 49 C.F.R.  
37 ((~~382~~)) 40; and (c) whether the medical review officer or breath

1 alcohol technician making the report accurately followed the protocols  
2 (~~for testing~~) established to (~~certify~~) verify or confirm the  
3 results, or if the driver refused a test, whether the circumstances  
4 constitute the refusal of a test under 49 C.F.R. 40. Evidence may be  
5 presented to demonstrate that the test results are a false positive.  
6 For the purpose of a hearing under this section, a copy of (~~the~~) a  
7 positive test result with a declaration by the tester or medical review  
8 officer or breath alcohol technician stating the accuracy of the  
9 laboratory protocols followed to arrive at the test result is prima  
10 facie evidence:

11 (i) Of a (~~confirmed~~) verified positive drug test or positive  
12 alcohol confirmation test result;

13 (ii) That the motor carrier, employer, or consortium has a program  
14 that is subject to the federal requirements under 49 C.F.R. 40; and

15 (iii) That the medical review officer or breath alcohol technician  
16 making the report accurately followed the protocols for testing  
17 established to verify or confirm the results.

18 After the hearing, the department shall order the disqualification  
19 of the person either be rescinded or sustained.

20 (5) If the person does not request a hearing within the twenty-day  
21 time limit, or if the person fails to appear at a hearing, the person  
22 has waived the right to a hearing and the department shall sustain the  
23 disqualification.

24 (6) A decision by the department disqualifying a person from  
25 driving a commercial motor vehicle is stayed and does not take effect  
26 while a formal hearing is pending under this section or during the  
27 pendency of a subsequent appeal to superior court so long as there is  
28 no conviction for a moving violation or no finding that the person has  
29 committed a traffic infraction that is a moving violation and the  
30 department receives no further report of a (~~confirmed~~) verified  
31 positive drug test or positive alcohol confirmation test during the  
32 pendency of the hearing and appeal. If the disqualification is  
33 sustained after the hearing, the person who is disqualified may file a  
34 petition in the superior court of the county of his or her residence to  
35 review the final order of disqualification by the department in the  
36 manner provided in RCW 46.20.334.

37 (7) The department of licensing may adopt rules specifying further

1 requirements for requesting and conducting a hearing under this  
2 section.

3 (8) The department of licensing is not civilly liable for damage  
4 resulting from disqualifying a driver based on a (~~confirmed~~) verified  
5 positive drug test or positive alcohol confirmation test result as  
6 required by this section or for damage resulting from release of this  
7 information that occurs in the normal course of business.

8 **Sec. 5.** RCW 46.25.090 and 2004 c 187 s 7 are each amended to read  
9 as follows:

10 (1) A person is disqualified from driving a commercial motor  
11 vehicle for a period of not less than one year if a report has been  
12 received by the department pursuant to RCW 46.25.120, or if the person  
13 has been convicted of a first violation, within this or any other  
14 jurisdiction, of:

15 (a) Driving a motor vehicle under the influence of alcohol or any  
16 drug;

17 (b) Driving a commercial motor vehicle while the alcohol  
18 concentration in the person's system is 0.04 or more as determined by  
19 any testing methods approved by law in this state or any other state or  
20 jurisdiction;

21 (c) Leaving the scene of an accident involving a motor vehicle  
22 driven by the person;

23 (d) Using a motor vehicle in the commission of a felony;

24 (e) Refusing to submit to a test to determine the driver's alcohol  
25 concentration while driving a motor vehicle;

26 (f) Driving a commercial motor vehicle when, as a result of prior  
27 violations committed while operating a commercial motor vehicle, the  
28 driver's commercial driver's license is revoked, suspended, or  
29 canceled, or the driver is disqualified from operating a commercial  
30 motor vehicle;

31 (g) Causing a fatality through the negligent operation of a  
32 commercial motor vehicle, including but not limited to the crimes of  
33 vehicular homicide and negligent homicide.

34 If any of the violations set forth in this subsection occurred  
35 while transporting hazardous material, the person is disqualified for  
36 a period of not less than three years.

1 (2) A person is disqualified for life if it has been determined  
2 that the person has committed or has been convicted of two or more  
3 violations of any of the offenses specified in subsection (1) of this  
4 section, or any combination of those offenses, arising from two or more  
5 separate incidents.

6 (3) The department may adopt rules, in accordance with federal  
7 regulations, establishing guidelines, including conditions, under which  
8 a disqualification for life under subsection (2) of this section may be  
9 reduced to a period of not less than ten years.

10 (4) A person is disqualified from driving a commercial motor  
11 vehicle for life who uses a motor vehicle in the commission of a felony  
12 involving the manufacture, distribution, or dispensing of a controlled  
13 substance, as defined by chapter 69.50 RCW, or possession with intent  
14 to manufacture, distribute, or dispense a controlled substance, as  
15 defined by chapter 69.50 RCW.

16 (5) A person is disqualified from driving a commercial motor  
17 vehicle for a period of:

18 (a) Not less than sixty days if:

19 (i) Convicted of or found to have committed a second serious  
20 traffic violation while driving a commercial motor vehicle; or

21 (ii) Convicted of reckless driving, where there has been a prior  
22 serious traffic violation; or

23 (b) Not less than one hundred twenty days if:

24 (i) Convicted of or found to have committed a third or subsequent  
25 serious traffic violation while driving a commercial motor vehicle; or

26 (ii) Convicted of reckless driving, where there has been two or  
27 more prior serious traffic violations.

28 For purposes of determining prior serious traffic violations under  
29 this subsection, each conviction of or finding that a driver has  
30 committed a serious traffic violation while driving a commercial motor  
31 vehicle or noncommercial motor vehicle, arising from a separate  
32 incident occurring within a three-year period, must be counted.

33 (6) A person is disqualified from driving a commercial motor  
34 vehicle for a period of:

35 (a) Not less than ninety days nor more than one year if convicted  
36 of or found to have committed a first violation of an out-of-service  
37 order while driving a commercial vehicle;

1 (b) Not less than one year nor more than five years if, during a  
2 ten-year period, the person is convicted of or is found to have  
3 committed two violations of out-of-service orders while driving a  
4 commercial motor vehicle in separate incidents;

5 (c) Not less than three years nor more than five years if, during  
6 a ten-year period, the person is convicted of or is found to have  
7 committed three or more violations of out-of-service orders while  
8 driving commercial motor vehicles in separate incidents;

9 (d) Not less than one hundred eighty days nor more than two years  
10 if the person is convicted of or is found to have committed a first  
11 violation of an out-of-service order while transporting hazardous  
12 materials, or while operating motor vehicles designed to transport  
13 sixteen or more passengers, including the driver. A person is  
14 disqualified for a period of not less than three years nor more than  
15 five years if, during a ten-year period, the person is convicted of or  
16 is found to have committed subsequent violations of out-of-service  
17 orders, in separate incidents, while transporting hazardous materials,  
18 or while operating motor vehicles designed to transport sixteen or more  
19 passengers, including the driver.

20 (7) A person is disqualified from driving a commercial motor  
21 vehicle if a report has been received by the department under RCW  
22 46.25.125 that the person has received a ~~((confirmed))~~ verified  
23 positive drug test or positive alcohol confirmation test ~~((either))~~ as  
24 part of the testing program ~~((required by 49 C.F.R. 382 or))~~ conducted  
25 under 49 C.F.R. 40 ~~((or as part of a preemployment drug test))~~. A  
26 disqualification under this subsection remains in effect until the  
27 person undergoes a drug and alcohol assessment by ~~((an agency certified~~  
28 ~~by the department of social and health services and, if the person is~~  
29 ~~classified as an alcoholic, drug addict, alcohol abuser, or drug~~  
30 ~~abuser, until))~~ a substance abuse professional meeting the requirements  
31 of 49 C.F.R. 40, and the person presents evidence of satisfactory  
32 participation in or successful completion of a drug or alcohol  
33 treatment and/or education program ~~((that has been certified by the~~  
34 ~~department of social and health services under chapter 70.96A RCW))~~ as  
35 recommended by the substance abuse professional, and until the person  
36 has met the requirements of RCW 46.25.100. The ~~((agency making a drug~~  
37 ~~and alcohol assessment under this section))~~ substance abuse  
38 professional shall forward a diagnostic evaluation and treatment

1 recommendation to the department of licensing for use in determining  
2 the person's eligibility for driving a commercial motor vehicle.  
3 Persons who are disqualified under this subsection more than twice in  
4 a five-year period are disqualified for life.

5 (8)(a) A person is disqualified from driving a commercial motor  
6 vehicle for the period of time specified in (b) of this subsection if  
7 he or she is convicted of or is found to have committed one of the  
8 following six offenses at a railroad-highway grade crossing while  
9 operating a commercial motor vehicle in violation of a federal, state,  
10 or local law or regulation:

11 (i) For drivers who are not required to always stop, failing to  
12 slow down and check that the tracks are clear of an approaching train;

13 (ii) For drivers who are not required to always stop, failing to  
14 stop before reaching the crossing, if the tracks are not clear;

15 (iii) For drivers who are always required to stop, failing to stop  
16 before driving onto the crossing;

17 (iv) For all drivers, failing to have sufficient space to drive  
18 completely through the crossing without stopping;

19 (v) For all drivers, failing to obey a traffic control device or  
20 the directions of an enforcement officer at the crossing;

21 (vi) For all drivers, failing to negotiate a crossing because of  
22 insufficient undercarriage clearance.

23 (b) A person is disqualified from driving a commercial motor  
24 vehicle for a period of:

25 (i) Not less than sixty days if the driver is convicted of or is  
26 found to have committed a first violation of a railroad-highway grade  
27 crossing violation;

28 (ii) Not less than one hundred twenty days if the driver is  
29 convicted of or is found to have committed a second railroad-highway  
30 grade crossing violation in separate incidents within a three-year  
31 period;

32 (iii) Not less than one year if the driver is convicted of or is  
33 found to have committed a third or subsequent railroad-highway grade  
34 crossing violation in separate incidents within a three-year period.

35 (9) A person is disqualified from driving a commercial motor  
36 vehicle for not more than one year if a report has been received by the  
37 department from the federal motor carrier safety administration that

1 the person's driving has been determined to constitute an imminent  
2 hazard as defined by 49 C.F.R. 383.5.

3 (10) Within ten days after suspending, revoking, or canceling a  
4 commercial driver's license or disqualifying a driver from operating a  
5 commercial motor vehicle, the department shall update its records to  
6 reflect that action."

**SHB 1266** - S COMM AMD  
By Committee on Transportation

**ADOPTED 04/14/2005**

7 In line 2 of the title, after "operators;" strike the remainder of  
8 the title and insert "amending RCW 46.25.010, 46.25.123, 46.25.125, and  
9 46.25.090; and creating a new section."

--- END ---